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14 UNITED STATES DISTRICT COURT  
15 CENTRAL DISTRICT OF CALIFORNIA  
16

17 ROBERT THOMSON,

18 Plaintiff,

19 vs.

20 TORRANCE POLICE DEPARTMENT  
and THE LOS ANGELES COUNTY  
21 SHERIFFS DEPARTMENT,  
22 Defendants.

Case No. CV11-06154 SJO (JCx)  
Date Action Filed: July 26, 2011

Assigned to:  
U.S. District Judge S. James Otero

**DEFENDANT TORRANCE POLICE  
DEPARTMENT'S EVIDENTIARY  
OBJECTIONS TO THE  
DECLARATION OF LAWRENCE  
MUDGETT**

Motion Hearing Date: Feb. 27, 2012  
Time: 10:00 a.m.  
Courtroom: 1- 2nd Floor  
Location: Spring Street

Defendant TORRANCE POLICE DEPARTMENT ("TPD") hereby objects to the Declaration of Lawrence Mudgett # 15647 LAPD, Retired, submitted in Support of Plaintiff's Motion for Summary Judgment and in Opposition to Defendants' Motions for Summary Judgment. (Lewis v. CITGO Petroleum Corp. (7th Cir. 2009) 561 F.3d 698, 704 [it is appropriate to make evidentiary rulings on proposed expert testimony in conjunction with a summary judgment order].)

### **EVIDENTIARY OBJECTIONS**

<b>Material Objected to:</b>	<b>Grounds for Objection:</b>	<b>Ruling:</b>
1. The Mudgett declaration in its entirety.	<b><u>FRE 702. Improper expert opinion.</u></b> Mudgett lacks the requisite qualifications to provide expert testimony on issues related to the public policies behind CCW regulation. In Paragraph 1, p. 2, lines 1-4, Mudgett states: "I was the Chief Firearms Instructor for LAPD SWAT for approximately 14 years and the Chief Firearms Instructor at the LAPD Police Academy for 13 years. I am a combat veteran having served in the First Air Cavalry in Vietnam as an Infantry Light Weapons Sergeant." He also states at Paragraph 2, p. 2, lines 5-11: "I am a Utah County Delegate. I recently testified in front of the state legislature in support of a bill to approve the 1911 pistol as the	Sustained: _____ _____ Overruled: _____ _____

Material Objected to:	Grounds for Objection:	Ruling:
	<p>official firearm of the state of Utah. I have lectured on the Second Amendment for the 912 Project. I am a Range Master at the famous Gunsite Academy in AZ. My wife and I run a Defensive Firearms Training Program here in Utah and we are NRA instructors. I hold 5 CCW permits. I am certified by the State of Utah as a CFP (Concealed Firearms Permit) instructor. I have testified as an expert witness on firearms and firearms training in Los Angeles Superior Court.”</p> <p>Mudgett, however, has no experience or education related to the rationales behind the regulation of concealed weapons or in designing policies, analyzing criminal statistics, or doing any of his own research. For instance, he does not have any expertise in analyzing criminal statistics (or any statistics for that matter), public safety issues, or threats posed by concealed weapons. It is not even clear that Mudgett actually served as a police officer in the field. Although Mudgett might be able testify as an expert on firearms and</p>	

Material Objected to:	Grounds for Objection:	Ruling:
	<p>firearms training, those issues are not relevant for purposes of this case. (<u>Eagleston v. Guido</u> (2d Cir. 1994) 41 F.3d 865, 874 [expert with sociology degree not qualified to provide testimony on “criminology or domestic violence”].)</p> <p>Moreover, all of Mudgett’s opinions seem to be based on reading some studies and then summarizing other research. This is also inadequate. (See <u>United States v. Kelley</u> (D. Kan. 1998) 6 F.Supp.2d 1168, 1184 [witnesses’ “self-directed efforts at reading reference works, talking with some researchers and growers, and then summarizing the work of others into popular ‘how-to guides’ fails to provide proffered expert with requisite foundation.”].)</p> <p>Apart from Mudgett’s lack of proper qualifications, he also offers a variety of unsubstantiated and speculative opinions.</p>	
<p>2. Paragraph 3, p. 2, lines 12-18: “I have reviewed the motions for Summary Judgment filed by Plaintiff, Torrance and</p>	<p><b><u>FRE 702. Improper expert opinion.</u></b></p> <p>The expert’s testimony does not provide any way for the court to determine its reliability. Mudgett does not explain the methodology by which he reaches this</p>	<p>Sustained: _____</p> <p>Overruled: _____</p>



1	Material Objected to:	Grounds for Objection:	Ruling:
2	LASD, including	opinion. Moreover, Mudgett does not	_____
3	supporting documents	have the requisite qualifications to testify	
4	and oppositions. The	on the geographic locations of schools	
5	need to Carry concealed	within Southern California. ( <u>Daubert v.</u>	
6	is due only to the	<u>Merrell Dow Pharm., Inc.</u> (1993) 509 U.S.	
7	decision, of the	579, 593-94 [court must determine	
8	California legislature to	methodology of the expert was applied	
9	make that the only	reliably to the facts of the case]; <u>Stilwell v.</u>	
10	method of permissible	<u>Smith &amp; Nephew, Inc.</u> (9th Cir. 2007) 482	
11	carry having, [ <i>sic</i> ]	F.3d 1187, 1192.)	
12	otherwise banned the		
13	possession of a loaded	<b><u>FRE 704. Improper legal conclusion.</u></b>	
14	firearm by law abiding	The expert's testimony improperly states a	
15	citizens and further, even	legal conclusion which is not permitted,	
16	the possession of an	i.e., the effect of California laws. Experts	
17	unloaded weapon within	cannot give an opinion on their legal	
18	1,000 feet of a school,	conclusions thereby "invading the	
19	which is Southern	province of the trial judge." ( <u>Nationwide</u>	
20	California would make	<u>Transport Finance v. Cass Information</u>	
21	travel nearly an	<u>Systems, Inc</u> (9th Cir. 2008) 523 F.3d	
22	impossible task."	1051, 1058.) Moreover, as detailed in	
23		TPD's Motion for Summary Judgment,	
24		Opposition to Plaintiff's Motion for	
25		Summary Judgment, and TPD's Reply,	
26		Mudgett's legal conclusion is incorrect as	
27		set forth in the statutes themselves.	
28			

Material Objected to:	Grounds for Objection:	Ruling:
	<p><b><u>FRE 402. Relevance.</u></b></p> <p>The January 2012 California legislative scheme governing weapons is not relevant to this case, as the only relevant timeframe is when Plaintiff's application for a CCW permit was denied by TPD: April 2011.</p> <p><b><u>FRE 602/703. Lack of foundation.</u></b></p> <p>Mudgett states that he "reviewed the motions for Summary Judgment filed by Plaintiff, Torrance and LASD, including supporting documents and oppositions." This is impossible. Mudgett signed his declaration on January 7, 2012. Neither LASD nor TPD had even filed <b>any</b> opposition documents yet. In fact, TPD did not file its opposition documents until a month later.</p>	
<p>3. Paragraph 4, p. 2, lines 19-24: "The reality is 49 states now recognize the citizens to carry a functional, handgun in a concealed manner, either by constitutional</p>	<p><b><u>FRE 602/703. Lack of Foundation.</u></b></p> <p>Mudgett does not explain upon what data these statements are based.</p> <p><b><u>FRE 702. Improper expert opinion.</u></b></p> <p>This testimony does not assist the trier of fact in determining a factual issue that it</p>	<p>Sustained:</p> <p>_____</p> <p>_____</p> <p>Overruled:</p> <p>_____</p> <p>_____</p>

Material Objected to:	Grounds for Objection:	Ruling:
<p>amendment, "Shall Issue" system or "Good Cause": 35 states have "shall issue" permit laws that usually require states to issue permits to those who meet legal requirements; 10 others have "may issue" or discretionary permit laws. Vermont, Arizona, Alaska and Wyoming do not require a permit to carry a concealed weapon."</p>	<p>would not be able to determine on its own. Under <u>Daubert v. Merrell Dow Pharm., Inc.</u>(1993) 509 U.S. 579, 593-94, and <u>Kumho Tire Co., Ltd. v. Carmichael</u> (1999) 526 U.S. 137, 141, expert opinion testimony is only appropriate where the trier of fact cannot resolve the factual issue without this specialized assistance. Moreover, it is unclear what Mudgett's testimony means.</p>	
<p>4. Paragraph 5, p. 2, lines 25 – 27: "It is my opinion, based upon my education, training and experience that increased training reduces the risk of accident, injury and misuse of firearms."</p>	<p><b><u>FRE 702. Improper expert opinion.</u></b> This testimony does not assist the trier of fact in determining a factual issue that it would not be able to determine on its own. Under <u>Daubert v. Merrell Dow Pharm., Inc.</u>(1993) 509 U.S. 579, 593-94, and <u>Kumho Tire Co., Ltd. v. Carmichael</u> (1999) 526 U.S. 137, 141, expert opinion testimony is only appropriate where the trier of fact cannot resolve the factual issue without this specialized assistance.</p>	<p>Sustained: _____ _____ Overruled: _____ _____</p>



1	Material Objected to:	Grounds for Objection:	Ruling:
2			
3		<b><u>FRE 402. Relevance.</u></b>	
4		The matters asserted are not relevant to the	
5		issue before the Court. For instance,	
6		anyone can obtain increased training on	
7		use of a firearm, regardless of whether they	
8		apply for a CCW permit or not.	
9	5. Paragraph 6, p. 3, lines	<b><u>FRE 602/703. Lack of foundation.</u></b>	Sustained:
10	2-7: "According to	Mudgett has not explained how his	_____
11	studies armed citizens kill	experience has led to the conclusion he	_____
12	more criminals in self-	reaches here, and how that experience is	Overruled:
13	defense than our Nations	reliably applied to the facts of the case.	_____
14	police officers by about 2	Mudgett also fails to identify any studies	_____
15	to 1. It is my opinion	that support his conclusion regarding	
16	based upon my	armed citizens killing more criminals than	
17	education, training and	police officers. Mudgett theorizes, without	
18	experience that criminals	providing any causal connection evidence,	
19	tend to fear armed	that criminals tend to fear armed citizens	
20	citizens more than they	more than law enforcement officers, and	
21	fear Law enforcement	that that has caused a drop in violent crime	
22	Officers and that the	each year. (See <u>Sorensen by &amp; Through</u>	
23	increase in the number of	<u>Dunbar v. Shaklee Corp.</u> (8th Cir. 1994)	
24	citizens who now carry	31 F.3d 638, 649-651 [testimony regarding	
25	concealed weapons is a	causative connection properly excluded	
26	significant factor in the	because scientific basis too speculative.])	
27	distinct and significant		
28			



Material Objected to:	Grounds for Objection:	Ruling:
<p>drop in violent crime each year (according to the FBI statics)."</p>	<p><b><u>FRE 702. Improper expert opinion.</u></b></p> <p>The expert's testimony does not provide any way for the court to determine the reliability of his conclusion that "criminals tend to fear armed citizens more than they fear Law enforcement Officer." Mudgett does not explain the methodology by which he reaches this opinion. Moreover, Mudgett blindly states that his opinion is based on his "education," but has provided no examples of what this education entailed. Without such information the court may not perform its "gatekeeping" role under <u>Daubert v. Merrell Dow Pharm., Inc.</u> (1993) 509 U.S. 579, 593-94, to determine that the methodology of the expert was applied reliably to the facts of the case. (<u>Stilwell v. Smith &amp; Nephew, Inc.</u> (9th Cir. 2007) 482 F.3d 1187, 1192.)</p>	
<p>6. Paragraph 7, p. 3, lines 8-18: "It is my opinion, based upon my education, training and experience that over the last 30 years the availability of concealed</p>	<p><b><u>FRE 702. Improper expert opinion.</u></b></p> <p>This testimony does not assist the trier of fact in determining a factual issue that it would not be able to determine on its own. Under <u>Daubert v. Merrell Dow Pharm., Inc.</u> (1993) 509 U.S. 579, 593-94, and <u>Kumho Tire Co., Ltd. v. Carmichael</u></p>	<p>Sustained: _____</p> <p>Overruled: _____</p>

1	Material Objected to:	Grounds for Objection:	Ruling:
2	carry has increased	(1999) 526 U.S. 137, 141, expert opinion	
3	dramatically from about	testimony is only appropriate where the	
4	10 states to over 49	trier of fact cannot resolve the factual issue	
5	currently. It is also	without this specialized assistance.	
6	interesting to note that 4		
7	states now have	Mudgett also offers no justification for his	
8	Constitutional Carry	conclusion that “shall issue” states have	
9	Laws. Wyoming,	had “success.”	
10	Alaska, Vermont, and		
11	Arizona allow any citizen	The testimony related to California	
12	who is not prohibited	residents in the last two sentences is	
13	from possessing a	argumentative and does not assist the trier	
14	handgun to carry it	of fact in determining a factual issue that it	
15	concealed. The	would not be able to determine on its own.	
16	legislatures of Utah and	Under <u>Daubert v. Merrell Dow Pharm.,</u>	
17	other states are	<u>Inc.</u> (1993) 509 U.S. 579, 593-94, and	
18	considering adopting	<u>Kumho Tire Co., Ltd. v. Carmichael</u>	
19	similar law. When	(1999) 526 U.S. 137, 141, expert opinion	
20	considering the success	testimony is only appropriate where the	
21	that other states have had	trier of fact cannot resolve the factual issue	
22	with the “shall issue	without this specialized assistance.	
23	system,” we must wonder		
24	why LE officials do not		
25	believe that the same		
26	result would occur in CA.		
27	One can only conclude		
28			

Material Objected to:	Grounds for Objection:	Ruling:
<p>that LE officials must believe that California residents are somehow different that the residents of other states. California residents must be deemed less trustworthy, less restrained, more violent, more prone to commit crimes, etc.”</p>	<p><b><u>FRE 402. Relevance.</u></b></p> <p>The testimony and opinion regarding California residents in the last two sentence has no relevance to the issues at hand.</p>	
<p>7. Paragraph 8, p. 3, lines 19-27 – p. 4, lines 1-3: “It is my opinion, based upon my education, training, and experience and being familiar with firearms research, regulation, publications and studies, that there is no correlation between</p>	<p><b><u>FRE 702. Improper expert opinion.</u></b></p> <p>The expert’s testimony does not provide any way for the court to determine its reliability. Mudgett does not explain the methodology by which he reaches this opinion. Without such information the court may not perform its “gatekeeping” role under <u>Daubert v. Merrell Dow Pharm., Inc.</u> (1993) 509 U.S. 579, 593-94 to determine that the methodology of the</p>	<p>Sustained:</p> <p>_____</p> <p>Overruled:</p> <p>_____</p>




Material Objected to:	Grounds for Objection:	Ruling:
<p>the issuance of CCW permits and unlawful violence. In fact as a retired law enforcement officer, it has been my experience that criminals do not seek out training or licensing for the purpose of carrying concealed weapons, and CCW permit holders are not in any way likely to increase crime or violence, and among the gun owning population are safer and more likely to reduce the accident rate because of their increased training and awareness. What facts I am aware of indicate that armed and trained citizens reduce crime by their very existence, as criminals do not know which citizens are in fact</p>	<p>expert was applied reliably to the facts of the case. (<u>Stilwell v. Smith &amp; Nephew, Inc.</u> (9th Cir. 2007) 482 F.3d 1187, 1192.)</p> <p><b><u>FRE 402. Relevance.</u></b></p> <p>The matters asserted are not relevant to the issue before the Court. For instance, anyone can obtain increased training on use of a firearm, regardless of whether they apply for a CCW permit or not.</p>	

Material Objected to:	Grounds for Objection:	Ruling:
armed.”		
<p>8. Paragraph 9, p. 5, lines 9-20: “The declaration of Franklin Zimring is not consistent with my knowledge, training or experience. Mr. Zimring expresses theories which are not related to CCW permits and are not consistent with any peer reviewed statistics. By way of example, one of the undisputed facts used by Zimring was the so called fact that 39 percent of people who commit murder had at the time no disqualifying convictions. My first thought is that these were juveniles who commit a good percentage of the crime in Los Angeles. Their juvenile arrests may not be used against them as</p>	<p><b><u>FRE 602/703. Lack of foundation.</u></b></p> <p>Mudgett has not explained how his experience has led to the conclusion he reaches here, and how that experience is reliably applied to the facts of the case. For instance, he does not identify any training or education that gives him any ability to analyze statistics.</p> <p><b><u>FRE 704. Improper legal conclusion.</u></b></p> <p>The expert’s testimony improperly states a legal conclusion which is not permitted, i.e., that the effect of the denial of a CCW permit is to deny the right of self-defense. Experts cannot give an opinion on their legal conclusions thereby “invading the province of the trial judge.” (<u>Nationwide Transport Finance v. Cass Information Systems, Inc.</u> (9th Cir. 2008) 523 F.3d 1051, 1058.) Moreover, as detailed in TPD’s Motion for Summary Judgment, Opposition to Plaintiff’s Motion for Summary Judgment, and TPD’s Reply, this is an incorrect view of the law.</p>	<p>Sustained:</p> <p>_____</p> <p>Overruled:</p> <p>_____</p>

Material Objected to:	Grounds for Objection:	Ruling:
<p>adults and they may comprise a portion of this supposed 39 percent. The second factor is that people who are arrested for serious crimes in LA are often allowed to plea the case down to a far lesser crime and the minor crime is the one they are actually convicted of. These are weaknesses in the criminal, justice system that should not be used, to deny the right of self- defense to law abiding citizens. I find the statistic suspicious in any case.”</p>		

Dated: February 10, 2012

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